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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,584

12/31/2003

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RPS920030219US1(4035)

2711

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05/05/2008

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EXAMINER

TIV, BACKHEAN

ART UNIT

PAPER NUMBER

2151

MAIL DATE

DELIVERY MODE

05/05/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/749,584	CROMER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BACKHEAN TIV	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 1/18/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Detailed Action***

Claims 1-35 are pending in this application. This is a response the amendments/Remarks filed on 1/18/08. This action is made **FINAL**.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,6,8,9-15,19-24,28-31,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,606,709 issued to Connery et al.(Connery) in view of US Patent 6,732,267 issued to Wu et al.(Wu).

As per claim 1, Connery teaches a method comprising: receiving, at a client of a computer system a modified wake-on-LAN packet via a network receive buffer on the client(col.2, lines 5-15), the modified wake-on-LAN packet comprising executable code(col.2, lines 5-15, col.6, lines 1-25).

Connery however does not explicitly teach storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS.

Wu teaches storing the executable code in memory associated with the network receive buffer(Abstract, col.2, lines 19-36); retrieving the executable code from the

memory by an action of BIOS associated with the client; and processing the executable code using the BIOS(Abstract, col.2, lines 19-36).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Connery to include storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS as taught by Wu in order to update a BIOS on a remote computer system(Wu, col.1, lines5-10).

One ordinary skill in the art would have been motivated to combine the teachings of Connery and Wu in order to to update a BIOS on a remote computer system(Wu, col.1, lines5-10).

As per claim 2, the method of claim 1, further comprising: adding the executable code to a wake-on-LAN packet to yield the modified wake-on-LAN packet and transmitting the modified wake-on-LAN packet to the client(Connery, col.2, lines 5-15).

As per claim 3, the method of claim 1, further comprising verifying the modified wake-on-LAN packet using the BIOS(Connery, Fig.6).

As per claim 6, the method of claim 1, further comprising modifying the BIOS with a set of instructions for the method prior to receiving the modified wake-on-LAN packet(Wu, Abstract).

As per claim 8, the method of claim 1, wherein the receiving comprises receiving the modified wake-on LAN packet over a network(Connery, Abstract).

As per claim 19, the system of claim 12, wherein the network receive buffer comprises the network receive buffer on a NIC card having wake-on-LAN support capability(Connery, Fig.1-6).

As per claims 9-15,20-24,28-31,35 do not teach or further define over the limitations in claims 1-3,6,8,19. Therefore claims 9-15,20-24,28-31,35 are rejected for the same reasons set forth above.

Claims 4,5,7,16-18, 25-27, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,606,709 issued to Connery et al.(Connery) in view of US Patent 6,732,267 issued to Wu et al.(Wu) in further view of 6,542,979 issued to Eckardt.

Connery in view of Wu does not explicitly teach as per claim 4, the method of claim 1, further comprising storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client.

Eckardt teaches storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client(Abstract, col.3, lines 40-61).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Connery in view of Wu to include storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client as taught by Eckardt in order to boot from either the standard partition or non-standard partition(col.1, lines 60-65).

One ordinary skill in the art would have been motivated to combine the teachings of Connery, Wu and Eckardt in order to boot from either the standard partition or non-standard partition(col.1, lines 60-65).

As per claim 5, the method of claim 4, further comprising booting the client from the PARTIES partition using the BIOS prior to the processing of the executable code, wherein the processing occurs through use of an application stored on the PARTIES partition(Eckardt, Abstract, col.3, lines 40-61). Motivation to combine set forth in claim 4.

As per claim 7, the method of claim 1, wherein the processing of the executable code comprises processing a ROM BIOS extension(Eckardt, col.3, lines 55-62). Motivation to combine set forth in claim 4.

As per claims 16-18, 25-27, 32-34, do not teach or further define over the limitations in claims 4,5,7. Therefore claims 16-18, 25-27, 32-34 are rejected for the same reasons set forth above.

### ***Response to Arguments***

The Office withdraws the 101 rejection of claims 9, 20-35 due to applicant's amendments to the claims and specification.

Applicant's arguments, pertaining to the art, filed 1/18/08 have been fully considered but they are not persuasive.

The applicant argues in substance,

a) No motivation to combine Connery and Wu, page 12-13,

b) Connery and Wu is non-analogous art, in particular Connery never mentions BIOS and Wu never mention Wake on LAN, page 13,

c) The Office's conclusion of obviousness is hindsight, page 13,

d) As per claims 1,9,12,20,23,28, Connery in view of Wu does not teach, storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS, page 14-15,

e) As per claims 4,5,7,16-18,25-27, and 32-34, Connery in view of Wu does not teach all the limitations of the independent claims therefore the dependent claims are not obvious, page 15.

***In reply to a);*** In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Connery, col.6, lines 21-25, teaches Wake on LAN used to update programs. Wu, col.1, lines 5-10, provides motivation to combine of updating BIOS on a remote computer.

***In reply to b);*** In response to applicant's argument that Connery and Wu is nonanalogous art, it has been held that a prior art reference must either be in the field of

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applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Conner, col.6, lines 21-25, teaches Wake on LAN is used to update programs. Wu, col.2, lines 5-15, teaches updating BIOS. Therefore, Connery and Wu are analogous art since both references teaches updating programs. Wu does it more specifically, e.g. BIOS, while Connery does it in a more general term, e.g. programs. **Note:** BIOS are software routines used to test hardware during startup.

***In reply to c);*** In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***In reply to d);*** Connery, col.2, lines 5-15, col.6, lines 1-25, teaches modified wake on LAN packets comprising executable code and further teaches the use of wake on LAN to update programs. Wu, col.2, lines 19-36, col.4, lines 17-33, teaches a system BIOS examining an indicator and if a certain flag is set, the BIOS will retrieve an update BIOS image from a partition, e.g. storage, and update the current BIOS settings and replace it with the new BIOS.



Therefore, Connery in view of Wu teaches storing the executable code in memory associated with the network receive buffer(BIOS update is stored in a partition(storage)); retrieving the executable code from the memory by an action of BIOS associated with the client(retrieving the BIOS update from partition(storage), the BIOS update is interpreted to be the executable code); and processing the executable code using the BIOS(current system BIOS updates to new system BIOS).

***In reply to e);*** The applicant has made the same argument as d), see ***reply to d)*** above.

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571) 272-5654. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. T./  
Backhean Tiv  
Examiner, Art Unit 2151  
4/28/08

/John Follansbee/  
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